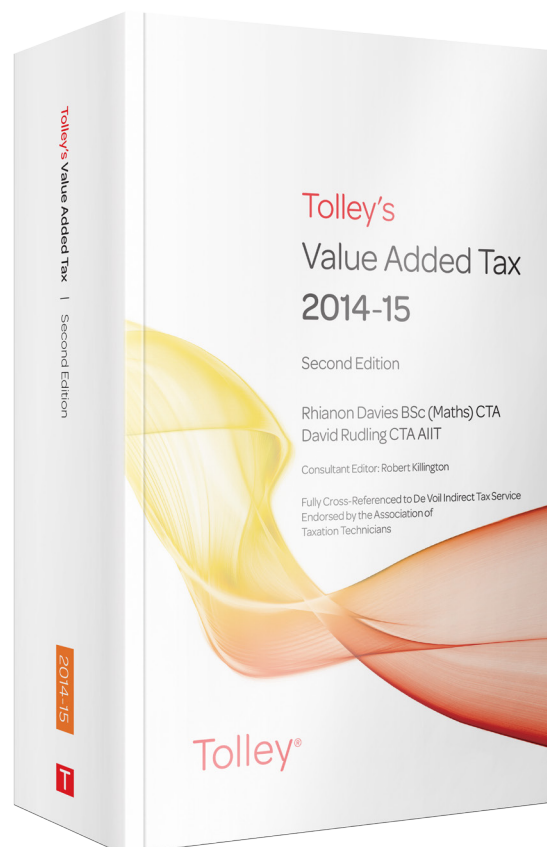


# TOLLEY'S VALUE ADDED TAX 2014 (SECOND EDITION)

Excerpt from chapter 63:  
Special Schemes



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# Special scheme for EU suppliers of broadcasting, telecommunication and electronic services to consumers from 1 January 2015

## *The Union VAT MOSS scheme*

### [63.41]

The scheme referred to at **63.40** is specific to non-EU suppliers. However, the 1 January 2015 change to the place of supply of services rules is also relevant to EU suppliers of broadcasting, telecommunication and electronic (BTE) services to consumers (B2C). To avoid the need for EU businesses making B2C supplies of BTE services in other EU countries from having to register for VAT in each of those other EU countries a Union VAT Mini One Stop Shop (Union VAT MOSS) scheme has been introduced.

EU businesses that make B2C supplies of BTE services to other EU countries are not obliged to use the Union VAT MOSS scheme to account for the VAT that is due in the other EU countries. Instead, they can register for VAT in each of the EU countries in which they make B2C supplies of BTE services. Whether or not the Union VAT MOSS is used, the place of supply (see **65.24** supply: place of supply) and the status of the customer (see **63.42**) need to be determined as well as considering whether what is being supplied consists of broadcasting, telecommunication, or electronic services (see **63.43**).

## *The status of the customer*

### [63.42]

From 1 January 2015, subject to the effective use and enjoyment rule, all supplies of broadcasting, telecommunication and electronic services are subject to VAT at the place where the customer belongs (see **65.24** supply: place of supply). The status of the customer therefore determines whether the customer or the supplier is liable for accounting for the VAT due on the supply. Where the customer is registered for VAT the customer should account for the VAT due via the reverse charge procedure, as was the case prior to 1 January 2015. Where the customer is not registered for VAT the supplier should account for the VAT due either by registering for VAT in the country where the customer belongs or by using the Union VAT MOSS scheme. In relation to supplies of broadcasting, telecommunication or electronic services a customer is regarded as a consumer (a non-taxable person) if they are not registered for VAT.

The EU law states that 'Unless he has information to the contrary, the supplier may regard a customer established within the Community as a non-taxable person when he can demonstrate that the customer has not communicated his individual VAT identification number to him. However, irrespective of information to the contrary, the supplier of telecommunications, broadcasting or electronically supplied services may regard a customer established within the Community as a non-taxable person as long as the customer has not communicated his individual VAT registration identification number to him.'  
*[Implementing Regulation (EU)282/2011, Art 18(2) amended by Implementing Regulation (EU)1042/2013, Art 1].*

The status of the customer may not always be obvious when services are provided to consumers via an agent, for example a website offering electronic services for sale. Is the provider of the services making a B2B supply to the agent or is the provider of the services making a B2C supply to the final consumer? In order to answer this question it will be necessary to determine who is making the supply to the final consumer. From 1 January 2015, where electronically supplied services or telecommunication services are supplied through an agent in circumstances where the agent is a taxable person taking part in the supply and acting in his own name, but on behalf of another person, the supply must be treated both as a supply to the agent and as a supply by the agent (see **3.4** agents).

Where telephone or electronic services are supplied through the internet or a telecommunications network, or an interface or a portal such as electronic marketplaces for applications and websites offering electronic services for sale, the taxable person taking part in that supply is treated as acting in his own

name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.

In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions need to be met:

- (a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;
- (b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof.

If the taxable person involved in such a supply, authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, that person (the agent) is not permitted to explicitly indicate another person as the supplier of those services to the customer.

A taxable person who provides payment processing services for suppliers of telecommunication and electronic services to consumers, and who does not take part in the supply of those services to consumers, is not treated as supplying telecommunication or electronic services to consumers.

*[Implementing Regulation (EU)282/2011, Art 9a inserted by Implementing Regulation (EU)1042/2013, Art 1].*

## ***Broadcasting, telecommunication and electronic services***

### **[63.43]**

The nature of broadcasting, telecommunication and electronic services is that they are rapidly evolving and it is not possible to provide an exhaustive list of all the services that could potentially come within this category.

Broadcasting services include services consisting of audio and audiovisual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule. *[Implementing Regulation (EU)282/2011, Art 6b inserted by Implementing Regulation (EU)1042/2013, Art 1].*

Telecommunications services include:

- (a) fixed and mobile telephone services for the transmission and switching of voice, data and video, including telephone services with an imaging component (videophone services);
- (b) telephone services provided through the internet, including voice over internet Protocol (VoIP);
- (c) voice mail, call waiting, call forwarding, caller identification, three-way calling and other call management services;
- (d) paging services;
- (e) audiotext services;
- (f) facsimile, telegraph and telex;
- (g) access to the internet, including the World Wide Web;
- (h) private network connections providing telecommunications links for the exclusive use of the client.

*[Implementing Regulation (EU)282/2011, Art 6b inserted by Implementing Regulation (EU)1042/2013, Art 1].*

Electronic services are essentially automated services involving minimal human intervention which are dependent on information technology for their delivery. Examples include:

- (a) the supply of digitised products generally, including software and changes to or upgrades of software;

- (b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;
- (c) services automatically generated from a computer via the internet or an electronic network in response to specific data input by the recipient;
- (d) online auction services which involve the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer;
- (e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part and which go beyond mere internet access and include other elements, for example, content pages giving access to news, weather or travel reports or access to online debates;
- (f) downloaded applications (apps);
- (g) movie downloads, music downloads, e-books, online games, online newspapers and journals;
- (h) the provision of online advertising space including banner advertisements on a website or web page;
- (i) website hosting and webpage hosting;
- (j) automated online distance maintenance of programmes;
- (k) automated online distance learning services;
- (l) radio or television programmes that can be accessed at any time by the listener or viewer from a catalogue of programmes selected by the media service provider.

The EU legislation provides example of services that are not electronic services, for example, services of professionals who advise clients by email and teaching services where the course content is delivered by a teacher over the internet. Both of these examples would involve more than minimal human involvement.

[*Implementing Regulation (EU)282/2011, Art 7*].

## ***Registration and cancellation of registration***

### **[63.44]**

Each EU country operates the Union VAT MOSS scheme. The scheme when operated by another EU country is referred to as a non-UK special scheme in the following paragraphs. From October 2014 UK businesses can apply to HMRC to be registered for the Union VAT MOSS scheme and use it to account for VAT on relevant supplies made after 31 December 2014, if they meet the following conditions.

- The applicant must be registered for VAT in the UK, be established in the UK or have a fixed establishment in the UK, and make or intend to make one or more supplies of broadcasting, telecommunication or electronic services to a consumer in another EU country.
- The applicant must not have a fixed establishment in the EU country in which the consumer belongs.
- The applicant must not be registered under a non-UK special scheme.
- The applicant must not be excluded from using the scheme.

The application for registration to use the Union VAT MOSS scheme must:

- include the applicant's name, postal address, email and website addresses;
- state whether or not the applicant has begun to make B2C supplies of BTE services in another EU country and if so, the date on which the applicant began to do so;

- state whether or not the applicant has previously been registered under a non-UK special scheme, and if so, the date on which they were first so registered;
- include any further information, and any declaration about its contents, that HMRC may by regulations require;
- be made by such electronic means, and in such manner, as HMRC may direct or may by regulations require.

HMRC are required to cancel a Union VAT MOSS scheme registration if:

- the business notifies HMRC, or HMRC otherwise become aware, that the business has ceased to make, or no longer intends to make, intra-EU supplies of broadcasting, telecommunication or electronic services to consumers;
- the business notifies HMRC, or HMRC otherwise become aware, that the business no longer meets the conditions for registration detailed above;
- HMRC determine that the business has persistently failed to comply with its Union VAT MOSS obligations.

A refusal of HMRC to register a business for the Union VAT MOSS scheme or a decision by HMRC to cancel a Union VAT MOSS scheme registration can be appealed as if the appeal was under *VATA 1994, s 83(1)*, but not under any particular paragraph of that subsection.

[*VATA 1994, Sch 3BA; FA 2014, Sch 22*].

## ***Union VAT MOSS scheme returns, payment of VAT and records***

### **[63.45]**

Union VAT MOSS scheme returns are submitted electronically, with each scheme return covering a calendar quarter. A business that is registered with HMRC to use the Union VAT MOSS scheme is required to submit a scheme return to HMRC and pay the relevant amount of VAT to HMRC within 20 days after the end of the calendar quarter to which the scheme return relates.

The relevant amount of VAT that should be paid to HMRC is the gross amount of non-UK VAT that is due as a result of making supplies of broadcasting, telecommunication and electronic services to consumers in other EU countries, calculated in accordance with the VAT rates applying in those other EU countries. Input tax is not recovered on scheme returns. Instead, input tax is recovered based on the usual rules and procedures for recovering input tax (see 34 input tax).

Scheme returns submitted to HMRC should be made out in sterling, with the conversion from other currencies made using the exchange rates published by the European Central Bank for the last day of the period to which the scheme return relates, or, if no such rates are published for that day, for the next day for which such rates are published.

A business that is registered with HMRC to use the Union VAT MOSS scheme is required to keep records of transactions relating to scheme returns in sufficient detail to enable the tax authorities in other EU countries to verify that the scheme returns are correct. When requested, the records must be made available to HMRC by electronic means.

Businesses belonging in the other EU Member States can register to use the Union VAT MOSS scheme in the Member State where they belong as an alternative to registering for VAT in each Member State to which they make B2C supplies of BTE services. For example, a business based in France could register to submit Union VAT MOSS scheme returns to the French tax authorities for supplies of BTE services to consumers in the UK as an alternative to registering for VAT in the UK.

[*VATA 1994, Sch 3BA; FA 2014, Sch 22*].

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